

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**C.R., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Oakland, CA, Employer**

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**Docket No. 16-1241  
Issued: June 15, 2017**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge

COLLEEN DUFFY KIKO, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On May 25, 2016 appellant filed a timely appeal from an April 20, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether OWCP properly found an overpayment of compensation in the amount of \$9,651.32 for the periods March 24, 2012 to March 8, 2013 and from May 18 to August 24, 2013 because OWCP failed to deduct health benefit premiums; (2) whether appellant was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment; and (3) whether OWCP properly found that it would deduct \$300.00 from continuing compensation payments to repay the overpayment.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On April 15, 2003 appellant, then a 44-year-old window and distribution clerk, filed an occupational disease claim (Form CA-2) alleging that she experienced extreme right knee and right shoulder pain as a result of her repetitive employment duties. OWCP accepted her claim for right shoulder acromioclavicular (AC) strain and right knee strain. It later expanded acceptance of appellant's claim to include bilateral meniscus tears. On October 18, 2003 appellant stopped work and OWCP paid wage-loss compensation. As of November 30, 2003, she received compensation on the periodic rolls.

Appellant returned to full-time limited duty as a modified sales and service distribution associate on January 18, 2006. She continued to receive medical treatment for her accepted conditions.

On September 26, 2011 appellant filed a claim for a schedule award (Form CA-7). By decision dated February 16, 2012, OWCP granted 21 percent permanent impairment of the right upper extremity, 20 percent permanent impairment of the right lower extremity, and 10 percent permanent impairment of the left lower extremity. The award ran from February 5, 2011 to November 2, 2014 for a total of 151.92 weeks. According to a schedule award payment printout from the Automated Compensation Payment System (ACPS), no deductions were made for health benefit premiums for payments for the period December 5, 2011 to March 10, 2012.

Appellant stopped work and filed claims for wage-loss compensation (Form CA-7) beginning March 16, 2012. The employing establishment, however, did not complete or submit the back of the CA-7 forms. By letter dated April 24, 2012, OWCP informed appellant that Forms CA-7 must be completed and submitted by her employing establishment. It requested that she forward her Form CA-7 claims to her employing establishment for them to complete and submit to OWCP.

In a telephone call memorandum (Form CA-110), appellant stated that she had not worked since March 2012 and inquired whether she was eligible to receive compensation for loss of wages. OWCP advised her that if she received wage-loss compensation her schedule award payments would stop. Appellant related that she had previously filed a Form CA-7 for March 2012, but was told that she could not receive wage-loss compensation.

Appellant contacted OWCP again *via* telephone on February 20, 2013 and according to a telephone call memorandum (Form CA-110) she expressed concern that health insurance deductions had not been made since she stopped work in March 2012. OWCP verified that it was not deducting health benefit premiums from her schedule award payments. Appellant requested that OWCP send a letter to the employing establishment asking them to transfer health benefits. She also asked about her eligibility for wage-loss compensation beginning March 2012. OWCP explained that appellant was not receiving total disability compensation and advised her to complete and certify the Form CA-7 for retroactive disability compensation. It pointed out that if it was determined that she was eligible for disability compensation, then her schedule award payments would stop.

According to a telephone call memorandum (Form CA-110) dated May 17, 2013, appellant informed OWCP that she would file a Form CA-7 for total disability. She indicated that she had been out of work since March 2012. Appellant returned to work on March 15, 2013,

but stopped shortly thereafter while waiting for surgery. She noted that her health benefits had continued.

In a letter to appellant dated May 17, 2013, OWCP informed her that her current schedule award ran until November 2, 2014. It explained to her that, since she was currently disabled from work pending right knee surgery, it would interrupt her schedule award payment to pay her disability compensation as long as she submitted a Form CA-7 to the employing establishment. OWCP advised appellant that, when her disability stopped, it would reinstate her schedule award payments.

On May 28, 2013 appellant underwent authorized right knee surgery.

In a telephone call memorandum (Form CA-110) dated July 8, 2013, appellant related that she did not want her schedule award payments interrupted in order to receive disability compensation. OWCP advised appellant that it would contact her employing establishment to see if it could start deductions for health benefits on her next schedule award payment.

OWCP indicated in a July 12, 2013 telephone call memorandum (Form CA-110) that it advised appellant that if she opted not to file a claim for disability compensation and continue with schedule award payments without interruption, then she would forfeit her entitlement for disability compensation for that period. It advised her that if she forfeited her disability compensation, OWCP could deduct health benefits from her schedule award payments. OWCP instructed appellant to put in writing that she understood that she was entitled to disability compensation and that she was voluntarily choosing to forfeit her entitlement to disability compensation in order to avoid interruption to her schedule award payments.

In a telephone call memorandum (Form CA-110) dated July 12, 2013, appellant called OWCP back and noted that her union steward was helping her to file a Form CA-7. OWCP advised her to file the Form CA-7 and then it would decide what further actions were needed.

According to a telephone call memorandum (Form CA-110) dated August 15, 2013, OWCP left a message for appellant relating that it needed her current health benefits code to start deductions for health benefits premiums. It also stated that the employing establishment needed to transfer health benefits to OWCP.

On August 21, 2013 appellant filed various claims for disability compensation (Form CA-7) for the periods April to November 2012; May 13 to June 28, 2013; and July 13 to August 7, 2013.

OWCP accepted appellant's claim for disability compensation and terminated her schedule award payments effective August 25, 2013. It noted that it would transfer health benefit deductions. The record reflects that an initial payment was provided for the period beginning August 25, 2013 and deductions for health benefits were deducted. On October 9, 2013 OWCP placed appellant on the periodic rolls.

By letter dated October 9, 2013, OWCP requested that the employing establishment forward a copy of appellant's health benefit enrollments to OWCP. It also asked for the employing establishment to transfer the Enrollment Code 592 effective August 25, 2013 since this was the first date of continuous total disability.

According to an October 22, 2013 memorandum (Form CA-110), OWCP asked the employing establishment to transfer the health benefit deductions to OWCP. It also noted that it needed to determine how to collect deductions for past periods when she was not working or receiving wage-loss compensation.

In an April 28, 2014 e-mail, an OWCP fiscal representative indicated that appellant's health benefits were transferred effective August 25, 2013 and that the employing establishment processed a termination on June 17, 2013. He also related that ACPS demonstrated that from December 5, 2011 to August 24, 2013 she received a schedule award with no health benefit deductions. An OWCP fiscal representative related that there was insufficient documentation to determine whether appellant had been working during this period and whether OWCP should have deducted health benefits. He asked that OWCP confirm with the employing establishment and Kaiser her employment status for the period December 5, 2011 to August 24, 2013, and to determine whether health benefits premiums were paid.

On May 19, 2014 ACPS provided clarification of the periods for which the employing establishment had deducted health benefits. OWCP provided several e-mails which demonstrated that from December 5, 2011 to March 20, 2012 appellant worked or received leave pay from the employing establishment. From March 24, 2012 to March 8, 2013, appellant did not work and no health benefits were deducted from her schedule award. From March 12 to May 17, 2013, she worked part time and health benefits were deducted by the employing establishment. From May 18 to August 24, 2013, appellant did not work and health benefits were not deducted from her schedule award payments.

An ACPS fiscal worksheet indicated that from March 24, 2012 to March 8, 2013 OWCP should have deducted \$6,969.06 for health benefits and from May 18 to August 24, 2013 OWCP should have deducted \$2,682.26 for health benefits. OWCP calculated a total overpayment of \$9,651.32.00.

In a letter dated May 20, 2014, OWCP advised appellant that health benefit premium deductions should have been deducted by OWCP during the periods March 24, 2012 to March 8, 2013 and from May 18 to August 24, 2013, resulting in an overpayment of \$9,651.32.

On May 19, 2015 OWCP issued a preliminary determination that appellant had received an overpayment of compensation in the amount of \$9,651.32 because OWCP had failed to deduct health benefit premiums from her schedule award payments during periods when she was off work. It explained that for the period March 24, 2012 to March 8, 2013 OWCP should have deducted \$6,969.06 for health benefits and for the period May 18 to August 24, 2013 it should have deducted \$2,682.26 for health benefits, resulting in a total overpayment amount of \$9,651.32. OWCP further found that appellant was at fault in the creation of this overpayment because she knowingly accepted compensation to which she was not entitled. The preliminary determination specifically noted that OWCP was unaware that she was totally disabled while receiving her schedule award payments, and thus it did not make appropriate health benefit deductions. OWCP requested that appellant reply to the Overpayment Action Request and Recovery questionnaire.

OWCP received appellant's request for a prerecoupment hearing before an OWCP hearing representative on July 15, 2015. Appellant indicated that she believed the overpayment occurred through no fault of her own and requested waiver of recovery of the overpayment. She

related that she never requested that her health insurance premiums be discontinued. Appellant also submitted a completed recovery questionnaire. She indicated that her monthly income totaled \$3,091.00. Appellant listed monthly expenses of \$650.00 for food, \$230.00 for clothing, \$964.00 for utilities, and \$1,504.00 for "other." She noted a monthly payment for credit and debt as \$3,368.00. Appellant related that other valuable property that she had included a house in foreclosure valued at \$212,000.00. She described funds of \$50.00 of cash on hand and \$9,000.00 in personal property and other funds. Appellant remarked that she had no money.

In a handwritten statement, appellant explained that the overpayment was created due to OWCP's failure to take deductions out of her schedule award payments. She asserted that she had expected OWCP to properly deduct necessary monies before issuing the payment check. Appellant further indicated her disability compensation benefits had not been enough for her to avoid filing for bankruptcy twice and for foreclosure once. She also noted that there was a four-month period when the employing establishment informed her that her medical benefits had been discontinued. Appellant mentioned that when her benefits were reinstated the premiums were higher than before. She alleged that the new higher amount was causing a financial hardship and that she had to go to the Food Bank for food the last two weeks of the month. Appellant asserted that she could not afford to afford to repay her debt.

Appellant submitted a September 17, 2015 letter from the Social Security Administration regarding monthly benefits, a December 13, 2015 OWCP benefits statement, a life insurance statement, a money order which indicated that the payment was for rent, a December 28, 2015 water bill, a December 2015 electricity bill, a December 2015 cell phone bill, a December 2015 cable bill, a December 2015 bill from Kay Jewelers, a December 2015 bill from Calvary Portfolio Services, and bank statements.

On January 29, 2016 a prerecoupment hearing was held. Appellant asserted that she was not at fault in the creation of the overpayment because she had previously asked OWCP on July 8, 2013 to withhold deductions for health benefits that were due. She explained that because normally her employing establishment took out deductions for health benefits in her paycheck she believed that OWCP also took the deductions out when it issued her compensation checks. Appellant related that she had been on workers' compensation since 2002 and that there were several times when she did not get paid at all. She noted that these lost wages caused financial hardship. Appellant indicated that even though her pain progressively worsened she kept trying to go back to work because it was the right thing to do. She indicated that she could no longer afford her mortgage payments and had lost her home. Appellant also described the various bills that she owed totaled almost \$900.00 a month. She noted that she paid \$1,120.00 for rent, \$127.00 for storage bills, a credit bill from Kay Jewelers, a clothing bill, a cell phone bill, and insurance statements. Appellant asserted that she would not have accumulated so many bills if she knew that she would be liable for such a large amount of medical benefits premium payments.

In a decision dated April 20, 2016, an OWCP hearing representative finalized the May 19, 2015 preliminary determination that appellant received an overpayment of compensation. She also finalized the finding that appellant was at fault in the creation of the overpayment. The hearing representative related that OWCP repeatedly requested that appellant provide completed Forms CA-7 in order to clarify her actual payment status. She explained that if appellant had provided these forms, it would have included information about her health benefit premiums and any periods when premiums should have been deducted by OWCP.

Accordingly, the hearing representative determined that appellant knew that she needed to provide an appropriately completed Form CA-7 to OWCP in order to receive proper payment. Since appellant was at fault, she found that appellant was not entitled to waiver of recovery of the overpayment.

The hearing representative noted that the evidence of record substantiated that appellant had monthly income of \$3,118.69, which consisted of social security benefits in the amount of \$477.00 monthly and OWCP compensation benefits of \$2641.69 monthly. While appellant had testified regarding her monthly expenses, she had not fully documented her expenses. The hearing representative further determined that after reviewing the income and expense information provided, it was reasonable to deduct \$300.00 every 28 days from appellant's continued compensation benefits.

### **LEGAL PRECEDENT -- ISSUE 1**

FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his or her duty.<sup>2</sup> When an overpayment has been made to an individual because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.<sup>3</sup>

An employee entitled to disability compensation may continue his or her health benefits under the Federal Employees Health Benefits program. The regulation of OPM, which administers the Federal Employees Health Benefits program, provides guidelines for the registration, enrollment, and continuation of enrollment for federal employees. In this connection, 5 C.F.R. § 890.502(a)(1) provides:

“An employee or annuitant is responsible for payment of the employee's share of the cost of enrollment for every pay period during which the enrollment continues. In each pay period for which health benefits withholdings or direct premium payments are not made, but during which the enrollment of an employee or annuitant continues, he or she incurs an indebtedness to the United States in the amount of the proper employee withholding required for that pay period.”<sup>4</sup>

In addition, 5 C.F.R. § 890.502(c) provides:

“An establishment that withholds less than or none of the proper health benefits contributions for an individual's pay, annuity or compensation must submit an amount equal to the sum of the uncollected deductions and any applicable establishment contributions required under section 8906 of the title, 5 United States Code, to OPM for deposit in the Employee's Health Benefits Fund.”<sup>5</sup>

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<sup>2</sup> *Id.* at § 8102(a).

<sup>3</sup> *Id.* at § 8129(a).

<sup>4</sup> *Id.* at § 890.502(a)(1).

<sup>5</sup> *Id.* at § 890.502(c).

Under applicable OPM regulations, the employee or annuitant is responsible for payment of the employee's share of the cost of enrollment.<sup>6</sup> An establishment that withholds less than the proper health benefits contribution must submit an amount equal to the sum of the uncollected deductions.<sup>7</sup> The Board has recognized that, when an under withholding of health insurance premiums is discovered, the entire amount is deemed an overpayment of compensation because OWCP must pay the full premium to OPM when the error is discovered.<sup>8</sup>

### **ANALYSIS -- ISSUE 1**

The record establishes that OWCP failed to withhold appellant's health insurance premiums for the periods March 24, 2012 to March 8, 2013 and May 8 to August 24, 2013. As previously stated, an overpayment of compensation occurs when an under withholding of health insurance premiums is discovered.<sup>9</sup> A fiscal worksheet demonstrated that from March 24, 2012 to March 8, 2013 OWCP failed to deduct a total of \$6,969.06 from appellant's schedule award payments for health benefits and from May 18 to August 24, 2013 it failed to deduct a total of \$2,682.26 from appellant's schedule award payments. Accordingly, OWCP calculated that appellant owed a total of \$9,651.32 in health benefits due to the under deduction.

The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received an overpayment of compensation in the amount of \$9,651.32 for the above time periods.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8129(a) of FECA provides that, when an overpayment of compensation has been made because of an error of fact or law, adjustment shall be made by decreasing later payments to which an individual is entitled. The only exception to this requirement is when an incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of FECA or be against equity and good conscience.<sup>10</sup> No waiver of payment is possible if appellant is with fault in helping to create the overpayment.<sup>11</sup>

In determining whether an individual is not without fault or alternatively, with fault, section 10.433(a) of OWCP's regulations provide in relevant part:

“An individual is with fault in the creation of an overpayment who:

Made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; or

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<sup>6</sup> *Id.* at § 890.502(b)(1).

<sup>7</sup> *Id.* at § 890.502(d).

<sup>8</sup> *James Lloyd Otte*, 48 ECAB 334 (1997).

<sup>9</sup> *Id.*

<sup>10</sup> 5 U.S.C. § 8129(b).

<sup>11</sup> *Robert W. O'Brien*, 36 ECAB 541, 547 (1985).

Failed to provide information which he or she knew or should have known to be material; or

Accepted a payment which he or she knew or should have known to be incorrect....”<sup>12</sup>

### **ANALYSIS -- ISSUE 2**

OWCP found that appellant was at fault in creating the overpayment of compensation because she should have known that she was not receiving the proper payment amount from OWCP and that she knew that she needed to provide information on her CA-7 form in order to make sure her payments from OWCP were correct.

The Board finds that appellant knew that health benefits were not being deducted from her schedule award benefits, therefore OWCP properly held that appellant was with fault because he knew or should have known that she was not entitled to the full amount of the compensation.

OWCP based its finding of fault on appellant’s knowledge that she knew that she was not receiving the proper payment from OWCP. It based its finding on evidence that she was aware that her deductions for health benefits had not been transferred to her OWCP schedule award payments. Whether an individual was at fault with respect to the creation of an overpayment depends on the circumstances. The degree of care expected may vary with the complexity of those circumstances and the individual’s capacity to realize that she is being overpaid.<sup>13</sup>

In this case, appellant has testified that she was unaware that her health insurance premiums had not been properly deducted from her schedule award payments. The facts of this case are complicated by the fact that the employing establishment did make deductions for health benefits during the intermittent periods while she worked.

However, the record substantiates that appellant called OWCP (Form CA-110) on February 20, 2013 and expressed concern that her health insurance premiums were not being paid since she stopped work in March 2012 and OWCP verified that it was not deducting health benefits premiums from her schedule award payments, she then requested that OWCP contact her employing establishment and ask them to transfer her health benefits. In another telephone memorandum dated July 8, 2013 appellant advised OWCP that she did not want her schedule award payments interrupted to receive disability compensation. OWCP informed appellant that it would contact the employing establishment to start deductions for health benefits on her next schedule award payment. In another telephone memorandum (Form CA-110) dated July 12, 2013, OWCP further informed appellant that, if she continued with schedule award payments, she would forfeit her disability compensation, and OWCP could deduct health benefits from her schedule award payments. A subsequent telephone memorandum (Form CA-110) dated August 15, 2013 related that OWCP informed appellant that it needed her current health benefit code to start deductions for health benefits. It also noted that the employing establishment needed to transfer health benefits to OWCP. According to OWCP procedures, a claimant should be found without fault if the overpayment results from the under withholding of health or life

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<sup>12</sup> 20 C.F.R. § 10.433(a).

<sup>13</sup> *Id.* at § 10.433(b).



insurance premiums, unless the claimant had actual knowledge of the calculation error.<sup>14</sup> Evidence from the telephone memoranda (Form CA-110) of record defeats appellant's claim that she did not know that her health benefit premiums were not being deducted from her schedule award. This evidence establishes that appellant had actual knowledge that her health insurance deductions were not being made.

In the April 20, 2016 decision, OWCP's hearing representative also found that appellant was at fault in the creation of the overpayment because she did not submit properly completed CA-7 forms which would have provided information regarding her health insurance premiums, the Board notes that the health insurance questionnaire portion of the CA-7 form is to be completed by the employing establishment, not appellant.<sup>15</sup> However, OWCP informed appellant on April 24, 2012 that the Form CA-7 should be completed and submitted by her employing establishment. Appellant therefore knew that OWCP would not have the information unless she requested that the employing establishment complete the CA-7 form.

The Board finds that OWCP has therefore established that appellant knew that her schedule award payments were an improper amount due to the lack of health premium deductions, and that appellant was at fault in the creation of the overpayment. No waiver of payment is possible if the claimant is at fault in helping to create the overpayment.<sup>16</sup>

### **LEGAL PRECEDENT -- ISSUE 3**

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA.<sup>17</sup> Section 10.441(a) of the regulations provide:

"When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. If no refund is made, OWCP shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship...."<sup>18</sup>

### **ANALYSIS -- ISSUE 3**

The hearing representative found that appellant received social security benefits in the amount of \$477.00 monthly, and OWCP compensation benefits of \$42,641.69 monthly. Appellant testified regarding her debts, but these debts did not exceed her monthly income.

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<sup>14</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, Initial Overpayment Actions, Chapter 6.200.5(b)(1)(c) (June 2009).

<sup>15</sup> See *C.G.*, Docket No. 12-1916 (issued February 13, 2013).

<sup>16</sup> *L.P.*, Docket No. 12-1897 (issued March 15, 2013).

<sup>17</sup> *Lorenzo Rodriguez*, 51 ECAB 295 (2000).

<sup>18</sup> 20 C.F.R. § 10.441(a).

Therefore the OWCP hearing representative found that appellant could repay the overpayment at a rate of \$300.00 per month. Based on the evidence, OWCP gave due regard to the relevant factors noted above and did not abuse its discretion in setting the rate of recovery.<sup>19</sup> The Board finds that it properly determined that the overpayment could be recovered by deducting \$300.00 from appellant's continuing compensation payments.

### **CONCLUSION**

The Board finds that appellant received an overpayment of compensation in the amount of \$9,651.32 and that she was at fault in creating this overpayment thereby precluding waiver of recovery. The Board also finds that OWCP properly found that it would deduct \$300.00 from continuing compensation every 28 days as repayment of the overpayment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the April 20, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 15, 2017  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>19</sup> See *M.D.*, Docket No. 11-1751 (issued May 7, 2012).